



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING**
ENFORCEMENT DIVISION
DIRECTIVE

DIRECTIVE NUMBER
213

DISTRIBUTION DATE
February 7, 2003

1. **SUBJECT: COMPLAINTS AGAINST RELIGIOUS, NON-PROFIT ORGANIZATIONS**
2. **PURPOSE:** To set forth the procedures for processing complaints or prospective complaints where there is a question of jurisdiction because the respondent may be, or claims to be, a religious, non-profit institution under the Fair Employment and Housing Act (FEHA).
3. **BACKGROUND:** The FEHA, at Government Code sections 12926, subdivision (d), and 12940, subdivision (j)(4)(B), provides that "employer" does not include a religious association or corporation not organized for private profit. However, the following exceptions apply:

A religious corporation or association that is a religiously affiliated health care facility is an employer under the FEHA and may not discriminate with respect to persons employed to perform duties that are not "religious duties" (defined at Gov. Code § 12926.2 (b)). However, it may restrict employment to adherents of a particular religion in any position constituting an executive or pastoral-care position.

A non-profit benefit corporation formed by or affiliated with a particular religion that operates an educational institution as its sole or primary activity may restrict employment to individuals of a particular religion. However, such corporations may not discriminate based upon other FEHA protected bases such as race, sex, national origin, etc.

It is important to note, neither the FEHA nor regulations of the Fair Employment and Housing Commission exempt non-profit religious organizations from the provisions of the California Family Rights Act (Gov. Code § 12945.2).

Title VII of the Civil Rights Act of 1964 (Title VII) does not have the same exemptions regarding religious organizations as those contained in the FEHA.

The language of Title VII differs from the FEHA in that it contains only a limited exemption for religious corporations. Section 702 of Title VII allows religious corporations, associations, educational institutions or societies to employ individuals of a particular religion to perform work connected with carrying on the organization's activities. Section 703(e)(2) specifically permits schools, colleges, universities, or other educational institutions

"...to hire and employ employees of a particular religion if the institution is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society or if the curriculum of such an institution is directed toward the propagation of a particular religion."

Although religious corporations or organizations under Title VII may base relevant hiring decisions on religious preferences, they may not make such decisions based on other protected bases such as race, sex, or national origin.

4. **PROCEDURES:**

A. **Intake:**

Where there is doubt at the intake stage whether an institution is religious in nature and, therefore, exempt from coverage as an employer, the case should be accepted. The issue of jurisdiction should be analyzed as a part of the investigation of the case.

B. **Investigation:**

The investigation should initially focus on obtaining the documentation necessary to analyze jurisdiction from the respondent. Sample interrogatories for this purpose are available in the Pre-Accusation Discovery Manual. If the respondent refuses to respond to the interrogatories, the case should be referred to Legal for enforcement.

C. **Determination of Religious Status:**

- 1) When the relevant information has been collected, it should be summarized in a memorandum to be attached to a "Legal Transmittal" (DFEH-600-26). (Refer to Directive 311, "Referral of Case Files to Legal.") The case should then be forwarded to the Legal Division for a determination as to the organization's status as a religious non-profit institution. The determination will be made on a case-by-case basis based on the facts of

each individual complaint. Even in those instances where the District Administrator feels the information available is clear that the respondent is exempt, the case should be forwarded to the Legal Division. As respondents are identified as "exempt," this information will be circulated to District Office staff.

- 2) When the Legal Division determines that the organization is not exempt, the processing of the complaint will proceed as usual. Where an organization is determined to be exempt from the applicable provisions of the FEHA, the legal opinion will be forwarded to the District Administrator with copies to the Deputy Directors of Enforcement and the Regional Administrators.

D. Complaints Where Religious Exemption Is Identified:

- 1) When an organization's exemption as a religious institution is identified at intake, including those organizations previously identified by the Legal Division for that particular office, where there is Title VII jurisdiction as described above, a complaint will be accepted, registered, and waived to EEOC. The complainant will be mailed a copy of DFEH-200-22.
- 2) Where the complaint is not jurisdictional with EEOC, the complaint should be accepted for "filing purposes only" following the procedures in Directive 228, "Complaints Where One or More of the Allegations or Parties are Rejected for Investigation."
- 3) When an organization's religious exemption is verified after a complaint is accepted, the complaint will be closed with Closing Category 01, "No Jurisdiction." If the case is dual filed with EEOC, it will be closed with Closing Category 11, "Processing Waived to Another Agency," and deferral will be made to EEOC. If the matter is not jurisdictional with EEOC, such other referrals, as are appropriate, will be made.

5. APPROVAL:

Dennis W. Hayashi, Director

Date